

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN DALE MAHLUM**, on January 13, 2003 at 9:02 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Dale Mahlum, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Sherm Anderson (R)
Sen. Vicki Cocchiarella (D)
Sen. Kelly Gebhardt (R)
Sen. Ken (Kim) Hansen (D)
Sen. Sam Kitzenberg (R)
Sen. Glenn Roush (D)
Sen. Don Ryan (D)

Members Excused: Sen. Bob Keenan (R)
Sen. Carolyn Squires (D)
Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Sherrie Handel, Committee Secretary
Eddy McClure, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 106, 12/20/2002; SB 124,
12/30/2002; SB 144, 12/30/2002
Executive Action: SB 51; SB 152

{Tape: 1; Side: A}

HEARING ON SB 106

Sponsor: SENATOR BRENT R. CROMLEY, SD 9, Billings

Proponents: Jill Gerdrum, State Auditor's Office; Al Smith, Montana Trial Lawyers Association.

Opponents: Jacqueline Lenmark, American Insurance Association and American Council of Life Insurers; Sue Weingartner, Alliance of American Insurers; Jon Metropoulos, Farmers Insurance Group; Greg Van Horssen, State Farm Insurance; Jan Van Riper, Blue Cross/Blue Shield; Frank Cote, HIAA.

Informational Witnesses: Betsy Griffing, General Counsel, State Auditor's Office

Opening Statement by Sponsor:

SEN. CROMLEY opened on behalf of SB 106 by request of the office of the State Auditor. The Auditor's office does not feel it is able to enforce the payment of claims because of the threshold requirement they have in the statute, Section 33-18-201, which requires that in any particular case, they can show not only that an amount is owing, but they have to show a general business practice on the part of the insurance company, which is a very difficult and expensive thing to do.

Proponents' Testimony:

Jill Gerdrum, Deputy State Auditor, said this bill deals with the unfair trade practices section of the insurance code. The violations are outlined on pages one and two of the bill and she went on to explain them, **EXHIBIT (bus06a01)**.

Al Smith, Montana Trial Lawyers Association, lent his support to the bill. He stated that when consumers don't get paid promptly for their insurance claims, the reality is that it's not worth it for trial lawyers to take their case. Attorneys make their money based on a percentage of the claim and most claims are for small amounts and not worth their time.

Opponents' Testimony:

Jacqueline Lenmark, American Insurance Association and American Council of Life Insurers, stated her organizations strongly oppose SB 106. The primary reason is that it is unnecessary, because Montana already has some of the strongest prohibitions against insurance misconduct of any state in the United States.

There is a particular reason why an administrative agency enforcing a regulatory provision needs to show a violation that occurs as a general business practice. The entity that is going to be prosecuted for a violation under this section, if this bill passes, will not have the full protection of law as they challenge or defend themselves against that proceeding. It will be done in an administrative proceeding, not in a judicial proceeding. It will be done with limited methods of appeal, limited access to the courts. And that's important, especially in Montana, because Montana is the only state in the U.S. that has provided by statute a private right of action to go against an insurance company for any act that is a violation of 33-18-201. That right is secured to the consumer and protected in 33-18-242; and, as **Mr. Smith** pointed out, a person who prevails in that sort of action is entitled to damages and punitive damages. The associations that **Ms. Lenmark** represents believe that there already is adequate protection for the consumer. The alternative is that this really means one strike and you're out as an insurance company. It means that you don't get to make a mistake. In addition to the volume of complaints listed as referred to the auditor's office, she asked the committee members to keep in mind the hundreds of thousands of claims that are paid properly and successfully every day and the volume of business done by an insurance company. One further problem she asked the committee to recognize concerning workers compensation was that property and casualty insurance companies who write workers comp insurance are subject not only to the provisions and prohibitions of the insurance code but also to a separate set of unfair claims settlement practices measures contained within the Workers Compensation Act. They are under a double regulatory system administered by two different bodies. **Ms. Lenmark** submitted that the protections in the law are already adequate to protect the consumer, to insure the proper practice of the insurance business; and she urged the committee to reject the measure because it will send a significantly negative message to the insurance industry for a product that Montanans need.

Sue Weingartner, Alliance of American Insurers, opposed SB 106 and provided written testimony, **EXHIBIT (bus06a02)**. They specifically opposed removal of the general course of business practice language found in Section 2, page 2, line 26 and in Section 3, page 3, lines 6 and 16 through 19 of the bill. The general business practices test in current law acknowledges that the claims process involves almost countless ministerial actions by claims personnel, clerical staff and even computer equipment. That test allows forgiveness for the occasional clerical error. Lack of this standard would make a secretarial error, a good faith judgment error by an adjuster, or even a computer foul-up a

violation of the statute. She again stated their opposition and asked that the committee vote against the bill.

Jon Metropoulos, Farmers Insurance Group, voiced strong opposition to the bill. He pointed out that competent, well-meaning people can make mistakes. This bill would penalize any mistake that the auditor's office might find. It does not help consumers to penalize the insurance companies for each small mistake. He said it levies very harsh penalties on insurance companies for small errors or oversights. There is a reason for the requirement that a good general business practice be shown, because it recognizes that mistakes can be made. His final words were that the way this bill would interact with other statutes in the levying of a \$25K fine for each violation, is not stated clearly in SB 106 and wanted to know how it would interact with Section 33-1-317.

Greg Van Horssen, State Farm Insurance, concurred with everything previously said by the opponents of the bill. He said that protections are already adequate in the law. For single infractions, statutes already allow huge incentives to the companies to act appropriately and disincentives to the companies who do things incorrectly. He stated that he would be very concerned as a committee to look at a bill that is one strike and you're out. Mistakes happen and we don't want to set up a policy to punish businesses in this state for single mistakes. The regulator's approach is to look for continued and regular infractions; and, if that is occurring, take a look at whether it is intentional or negligent. Frankly, it shouldn't matter. If it appears to be a business practice, then something should be done. **Mr. Van Horssen** noted that this would be an opportunity to have a finding of wrongdoing for a single instance at the administrative level. There are two different standards right now: general business practices at the administrative level and single incidents at the civil level. When a plaintiff's attorney or anyone else brings an action in the civil court for that single incident, they must prove the single incident was wrongdoing and there was malice or negligence. That tool already exists in Montana. What this bill will do is that it will allow for a finding of wrongdoing for that single incident which may be used in the civil court as proof there was wrongdoing. We have different standards. He stated their opposition to the bill and asked for a do not pass recommendation.

Jan van Riper, Blue Cross/Blue Shield of Montana, agreed with previous comments of representatives of the insurance carriers. She said **Mr. Smith** indicated some concern with respect to claimants who have small claims and cannot readily get private attorney representation. She expressed her belief that it is a

very legitimate concern. Under present law, there is some assistance for those people with small claims.

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Frank Cote, Health Insurance Association of America, agreed with all of the other opponents. He stated that the state auditor's office has some additional enforcement abilities under Chapter 18, Part 10. He expressed their opposition to the bill due to the one strike and you're out aspect.

Larry Jones, Liberty Northwestern, joined in the comments of the other opponents. Workers compensation is a unique insurance coverage system. It is not like other lines of insurance where you might have a single claim for loss. He explained the process for workers compensation claims under the Montana Workers Compensation Act. This particular approach would add another administrative tribunal to deal with these disputes which would result in conflicting decisions on exactly the same issue. Lastly, **Mr. Jones** shared something not yet addressed to the committee. The Montana Workers Compensation Act, 39-71-2905, states that the Workers Compensation Board has exclusive jurisdiction to resolve disputes over entitlement to workers compensation benefits, and this is a jurisdictional issue that has not even been considered by the Commissioner of Insurance.

Roger Mc Glenn, Independent Insurance Agents Association of Montana, rose in opposition to SB 106. Agents are often times the vehicle that encourages consumers to go to the insurance department when they feel there is a problem or violation of statute. Fewer than 7 percent of all claims ever have a complaint to the insurance agent, insurer or insurance department. In the market we are experiencing today, the availability and affordability of insurance are significant problems. He said he fears that passage of this bill will adversely affect the availability and affordability of insurance in Montana. Montana only represents .3 percent of the national property and casualty insurance volume and **Mr. Mc Glenn** expressed concern that the passage of this bill may make companies not make their products available or increase costs. He asked for a do not pass on the bill.

Denise Pizzini, New West Health Services and Montana Benefits & Health Connections, agreed with previous testimony in opposition to SB 106 and requested that the committee not pass the bill.

Don Allen, Montana Association of Insurance and Financial Advisors, said that from an agent's standpoint, he would second the comments made by **Mr. Mc Glenn**.

Questions from Committee Members and Responses:

SEN. ROUSH asked **Ms. Gerdrum** if the complaints she listed in Exhibit 1 are individual complaints and raised the question about the testimony of opponents in which they claim other ways to handle the complaints. **Ms. Gerdrum** answered that her office is talking about individual complaints and the 545 are only those complaints that were coded "denial of claim" or "unsatisfactory settlements or offers." She continued on to say that to argue that her office has the ability to easily prove a business practice is somewhat naive. They do not have a Market Conduct Team which would go into insurance companies for up to weeks at a time poring over their records and consumer complaints to look for general business practices. The auditor's office does not have the resources to do that and proving a general business practice is not an easy thing to do. She searched back through the auditor's records and, since 1992, only one case could be found that referenced general business practice. They often settle claims by asking the insurance company to pay the claim.

SEN. ROUSH asked if the auditor's office feels that insurance policies sold in Montana by licensed agents has language that is understood by the general consumer and could that be the cause of some of these complaints. **Ms. Gerdrum** said to state they are easy for the consumer to understand would be a stretch, but it is not always the problem. She went on to claim that in one case, a farmer was offered \$2,500 when, in fact, the claim was worth over \$60K, which the auditor's office was able to recover for the farmer.

SEN. COCCHIARELLA directed questions towards **Ms. Gerdrum** about workers compensation claims adjusters and the new standard to which they would be held if SB 106 should pass. **Ms. Gerdrum** asked **Betsy Griffing, chief counsel for the auditor's office**, to address the question. **Ms. Griffing** said her understanding is that there is a general exclusion for workers compensation in Section 33-1-102(5), which says that this code does not apply to workers compensation insurance programs provided under 39-71-72.

SEN. COCCHIARELLA asked **Mr. Jones** if he understands that workers comp would not be covered under this bill. He replied that he did not understand it. **Ms. Lenmark** offered testimony that indicated workers compensation is not excluded and **Ms. Griffing** rebutted her statements. **Mr. Jones** agreed with **Ms. Lenmark's** interpretation. **SEN. COCCHIARELLA** asked **Mr. Jones** to clarify her situation. She works as a workers comp claims adjuster. She works for self-insured businesses and private carriers. She stated she could personally be subjected individually and personally to those provisions to which **Mr. Jones** replied in the affirmative. **Ms. Gerdrum** responded that a workers comp claims adjuster is already subject private rights of action; this bill

only subjects licensees for a single violation to administrative action by the insurance department.

SEN. SPRAGUE noted to **Ms. Griffing** that this law hasn't been adjusted since about 1983. He found it curious that her department thinks that now we have a problem, that we didn't have prior to that time. **Ms. Griffing** said one of the reasons they see this as an important bill at this time is because what happens from an enforcement perspective is you can have a violation via a misrepresentation of facts, a failure to acknowledge any of these areas that can be particularly harmful to an individual. Their goal is to make the administrative action available to individuals and to make sure that companies review those claims in accordance with the law.

{Tape: 2; Side: A}

SEN. SPRAGUE commented on the good job the auditor's department had done in collecting some \$775K for 140 victims. He asked **Ms. Gerdrum** if her department could double the income with this new law. **Ms. Gerdrum** could not put an estimate on how much more money her department could recover. She pointed out that the way the auditor gets these complaints is through consumer calls.

SEN. SPRAGUE spoke again to the urgency and asked if nothing is broke, why fix it. **Ms. Gerdrum** said there are theories out there; for example, companies can set their computers to deny certain claims in certain ways. They can delay claims a few times; it's money in their pockets. **SEN. SPRAGUE** requested that, if **Ms. Gerdrum** was going to talk in hearsay, she give him names of the consumer groups, because this committee has to make decisions based on fact. **Ms. Gerdrum** stated that the information her Policy Holders Services Department uses is from Consumer Federation of America.

SEN. RYAN asked **Mr. Smith** about the fact sheet from the auditor's office (Exhibit 1) regarding policies being cancelled and payment denied for chemotherapy due to a late payment by an employer.

SEN. RYAN wanted to know what recourse these people have under Montana law. **Mr. Smith** stated the people in both cases would have recourse if they could find an attorney to take their case. A discussion followed in which **Mr. Smith** discussed actual damages pursuant to the denial or non-payment of the claims.

SEN. RYAN then asked **Ms. Lenmark's** opinion. She commented that the remedies available to the consumer in those situations are making a complaint to the state auditor's office as provided for in existing statute, making a complaint to the insurer about the complaint. If a complaint is made to the insurer, under existing law, the insurer is required to record and make a record of that

complaint and to maintain a record of all complaints. In part 10 of this particular part of the insurance code, the state auditor is given the authority to go in and ask for the record of all complaints in order to assist the state auditor in establishing a general business practice. Assuming those different complaints are not remedies, another thing the insured could do is seek legal counsel. Since 1987, when 33-18-242 was enacted to allow a lawsuit for a single violation, there has been a very active plaintiff's practice in the area of insurance bad faith. In addition, under part 10, the State Auditor can issue a cease and desist order. If that order is violated, there is an additional monetary fine. Also under part 10, if the insurer commits some undefined unfair trade practice, the state auditor has enforcement authority.

SEN. HANSEN addressed his question regarding the passage of this bill sending the wrong message to insurance companies to **Mr. Mc Glenn** and that he doesn't want that to happen. However, **SEN. HANSEN** said he wants to protect consumers. He asked for elaboration on the 7 percent and how that relates back into the 545 complaints received by the auditor's office. **Mr. Mc Glenn** said there are thousands of claims settled without problem outside of the 545 listed by the state auditor's office. His concern is that they have seen insurance companies withdraw profits or increase pricing on it because of a real or perceived fear of the climate in Montana.

Closing by Sponsor:

SEN. CROMLEY thanked the committee for their attention. He said he thinks if everyone had their insurance claims paid promptly and quickly, then you don't understand the purpose of this bill. On the other hand, if you've had some problems getting claims paid, perhaps you can understand the position of the auditor's office, which receives a fair number of complaints. He pointed out that people with some of the larger claims can hire an attorney to handle their cases. The purpose of this bill is the smaller claims. A couple of years ago, he had \$35 owed to him from an insurance claim. **SEN. CROMLEY** said he is an attorney; he had heard about people filing a complaint with the insurance commissioner; he filed a claim to see what would happen. The commissioner investigated and found **SEN. CROMLEY** should be paid his \$35 by the insurance company. But, two years later, he has not received his \$35. Most people don't know the insurance commission exists and so those claims just go unpaid and no complaint is made. If they file a claim with the insurance commissioner, the commission may agree with the consumer. However, the commissioner has no enforcement power whatsoever. He addressed the \$25K fine, which is not in there. The primary

penalty the auditor is going to determine is payment of the claim. There is a provision for interest if it is not paid within a reasonable period of time. There was discussion about the administrative fine in Section 3 which says administrative penalties already exist for up to \$1K for each separate violation. But that still requires that the insurer still shows that the insurance company fails to use due diligence in processing all claims. It still goes to the general business practice. Remedy here is not going to be as onerous as the insurance companies feel; it is going to assist the auditor in being able to enforce payment when payment is due on an individual claim.

HEARING ON SB 124

Sponsor: SENATOR JON TESTER, SD 45, Big Sandy

Proponents: Jill Gerdrum, State Auditor's Office; John Kershaw, AARP Montana; Rick Bartos, Adult Protective Services of Health and Human Services; Joe Mazurek, D.A. Davidson; Anita Rossman, Montana Advocacy Program.

Opponents: Don Allen, Montana Association of Insurance and Financial Advisors; Mark Baker, partner in the law firm of Anderson and Baker; Jacqueline Lenmark, American Council of Life Insurers and the American Insurance Association; Jan van Riper, Blue Cross/Blue Shield; Doug Head, Viatical & Life Settlement Association of America; Greg Van Horssen, State Farm Insurance

Opening Statement by Sponsor:

SEN. TESTER said SB 144 is a senior citizen and consumer protection bill. Senior citizens are increasingly targeted as victims of fraud, particularly in these difficult economic times. SB 124 protects Montana consumers, especially senior citizens, by requiring suitability standards for certain insurance products, establishing standards for life settlement products, allowing restitution and strengthening enforcement statutes in the insurance code. It also elevates elder abuse to felony status. The major areas of the bill are: 1) Suitability, Section 1, page 2 -- It requires the agents to think about their customers' best interests and is a very critical component of the bill; 2) Restitution, Section 6, page 9 -- It allows the commissioner to require financial restitution for all financial losses and to pay back at 10 percent annual interest, because elderly people don't have the opportunity to recoup their losses by virtue of their age; and 3) Elder Abuse, Section 11, page 15 -- It defines elder portion of the bill. There are amendments to the bill dealing

with the suitability and sale of life settlements to elderly folks and the prohibition of the resale of those life settlements in the state of Montana, **EXHIBIT (bus06a03)**.

Proponents' Testimony:

Jill Gerdrum, State Auditor's Office, offered her fact sheet on SB 124, **EXHIBIT (bus06a04)**, the Montana Silver Haired Legislature, **EXHIBIT (bus06a05)**, and the Simmons letter, **EXHIBIT (bus06a06)**. She said SB 124 is a senior and consumer protection bill. The state auditor's office receives thousands of complaints each year from senior citizens. Their Policy Holder Services and Securities Bureau handles the complaints as well as numerous telephone inquiries where they walk through insurance or securities issues with the consumer. SB 124 makes the job of protecting consumers a little easier. They have concentrated their efforts on areas where senior citizens are particularly vulnerable. It's important because senior citizens don't have the ability to recover from large financial losses as they are often on fixed incomes and, by definition, older.

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She then went on to walk the committee through each provision of the bill and stated she would be available for any questions.

John Kershaw, AARP Montana, offered his written testimony, **EXHIBIT (bus06a07)**.

Rick Bartos, Adult Protective Services of Health and Human Services, stated he was there as a reserved proponent of the bill. They were not indicating expertise in the area of insurance, but there are certain parts of the bill he praised **SEN. TESTER** and the state insurance commissioner for taking on. Adult Protective Services is the state designee who intervenes and protects the elderly and developmentally disabled persons in the state. They prevent abuse, neglect, sexual abuse, and financial exploitation. Most of their victims are isolated, vulnerable, and his department has seen an increase in financial exploitation in this state. For statistical purposes, in the last three years, approximately 420 cases per year occurred. Sixty percent are family perpetrators; the other 40 percent are outside of the family. Those are the cases referred to by **SEN. TESTER** and **Mr. Kershaw**. They work closely with the state insurance commissioner, the Department of Justice, and the Medicaid Fraud Control Unit, as is required by statute. They are very much in favor of the section identified on page 15 of the bill, lines 2 through 8, in which the bill would identify taking

advantage of an elderly person or someone with a developmental disability in the area of the purchase of insurance or securities. More importantly, on page 16, the increase of the penalty addresses the penalty for such a perpetrator. Right now, it's a simple misdemeanor. Last week, the House Judiciary Committee on HB 17 heard a bill from the Department of Justice to increase the penalty from a misdemeanor to a felony. It received favorable comment from the committee.

Joe Mazurek, D.A. Davidson, testified to the aspects that change portions of the securities code. They have no objections to the changes; in fact, they think it's important for the securities industry to be well regulated in order to protect the elderly and others. He offered an observation that the securities industry has been subject to suitability standards for many years. They also support increased penalties for elder abuse.

Anita Rossman, Montana Advocacy Program, explained that her organization is a private, non-profit, disability-rights advocacy agency funded with federal dollars but designated by the governor to provide protection and advocacy services for people with mental illness in the state of Montana. They have broad power to investigate abuse and neglect allegations in institutions and other settings and to obtain access to records and to then pursue remedies on behalf of the people who have been harmed. She said her organization supports the bill, particularly the elder abuse portion. She stated that by amending the elder and developmentally disabled abuse prevention act, prosecutors are given the chance to prosecute someone whose conduct was egregious because of where it happened and who the victim was and allows them to enhance the penalty somewhat beyond what would be available under the criminal code.

Opponents' Testimony:

Don Allen, Montana Association of Insurance and Financial Advisors, said he didn't think anyone in the room would condone the kinds of crimes against elderly and disabled people talked about today. He agreed that there are abuses and people who take advantage of other people in all walks of life. The suitability issue in this bill was his concern and he talked about the debates over it. His concern was not with parts of the bill; it was just suitability. In terms of suitability, he shared his concern that whenever an agent has to gather information from a potential client, he may not have gathered all of the information, not because they didn't ask the right questions nor because there might be different questions various insurers want to ask, but because the uniformity is of concern. **Mr. Allen** then listed the restitution and heavy penalties listed in the bill and

said it puts a heavy burden on the agents in terms of trying to determine exactly what it is they need to ask and what they need to tell the consumer. Some companies have designed guidelines in this regard and others have not. He spoke to the issue of a full chapter on fraud in the insurance code. There are other laws where agents make a mistake and they lose their license. **Mr. Allen** raised more concerns about an agent making one mistake and his name in the newspaper, his reputation ruined, all before he has a chance to prove his innocence. He asked for a requirement in the bill for the commissioner to have a task force of both insurers and producers to work on the guidelines as well as a later effective date.

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Mr. Allen spoke of a misunderstanding wherein the consumer said the agent told him/her one thing, but the agent claims not have said that. He asked that the committee amend the suitability part of the bill and offered to work with the department to develop the amendments.

Mark Baker, partner in the law firm of Anderson and Baker, distributed paperwork that consisted of a statement in opposition to SB 124, **EXHIBIT (bus06a08)**, and from **Life Settlement Institute, EXHIBIT (bus06a09)**. However, the amendments submitted by the commissioner actually deal with the narrow issue he represents, the life settlements products. He said he's pleased to see the commissioner move from an outright prohibition of life settlements products within SB 124 to some kind of regulatory framework where life settlements products can still be made available to the life insurance policyholders. **Mr. Baker** explained to the committee how a life settlement works and went on to share information about viaticals. Viaticals tend to be products that are sold to terminally ill individuals that have life insurance policies.

Jacqueline Lenmark, American Council of Life Insurers and the American Insurance Association, rose in strong opposition to SB 124. This bill would virtually give over all authority to enact specific legislation with clear parameters. The legislation is obviously being represented to the committee with the intent to correct what is a serious problem, but she asked the committee to consider how broad the legislation is as drafted. The legislation would also ask Montana citizens to give up their own right to make determinations about their own lives and business choices. In the process, the effect of the legislation, as drafted, jeopardizes the very legitimate careers of people who are working in this area of the law. She said suitability in this section is intended to be codified in the Unfair Settlement

Claims Practices-Unfair Trade Practices in the insurance code. Section 1 doesn't tell what suitability is or who will make that determination. It contains Subsection 6, which authorizes the Commissioner of Insurance to adopt rules to implement. But Subsection 6 gives no guidance to the commissioner about what sorts of rules the commissioner is to enact. **Ms. Lenmark** stated that is an unconstitutional delegation of legislative authority. The Montana Supreme Court has already held repeatedly that, for an agency to constitutionally promulgate and adopt rules, it must have specific guidance from the legislative body about what the parameter of what those rules are. She cited several court cases. The next thing she asked the committee to consider was found on page 15 of the bill. This is the section that contains definitions that are being amended with regard to elder abuse. The age threshold is 60 years old and used herself as an example. Under the bill as it is now written, in two years, her adult step-son could bring an administrative action against the person who sold her a particular insurance policy. This bill doesn't provide any protection for an individual who is exercising their own free will or choice without going through that administrative action. **Ms. Lenmark** referenced Exhibit 4 under the heading, "Examples of Unsuitable Transactions." It says that the insurance agent is alleged to have targeted senior citizens. She expressed her disappointment that this particular example was being used to support this legislation since the violations are alleged and not proven. AIA and ACLI strongly recommend a do not pass on this legislation.

Jan van Riper, Blue Cross/Blue Shield, stated her support of an amendment which would remove out any reference in this bill to the Medicare Supplement. Regarding the rest of the bill minus that amendment, she echoed **Ms. Lenmark's** comments with regard to the suitability term. On page 9, line 18, **Ms. Van Riper** voiced her opinion on the language. She argued that this is too broad to be included under the commissioner's jurisdiction.

Doug Head, Viatical & Life Settlement Association of America, saw viaticals and life settlements as two completely different issues, **EXHIBIT (bus06a10)**. There is no product sold to a consumer in the case of viatical settlement. It's a consumer selling his life insurance policy to get rid of something he bought earlier. In a viatical settlement, as regulated in Montana, this involves a terminally ill individual. A life settlement involves a person who may be older but certainly not a person who is 28 years old with a very long life expectancy. His association has members who deal with both types of transactions. Montana passed law governing viatical settlements to protect the terminally ill from possible abuses in the urgent matter of selling their life insurance policy when they needed the money

for treatment or other situations like that. It took several years for the department to offer regulation that would allow for licensing, so there was very little activity. Today, there is one licensee in the state who can buy from the terminally ill, Coventry Financial. His organization supports the bill, but encouraged the committee to look and see if the legislation is working the way it was intended. It was his belief that when the original legislation was passed, it was intended to protect individuals from abuse but not to deny them their right to sell their personal property, particularly when the person selling it is terminally ill and in desperate circumstances. He pointed good things in the amendment, such as disclosure to consumers.

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Mr. Head continued on to say that in the wake of the original law, the department determined by rule that a viatical provider may only enter into a viatical settlement contract with a person who has a terminal illness. In effect, the prohibition has been in effect for Montana for the past two years. He said it's time for the department to work with legislators, the industry, and consumer representatives along with the sponsor to make this a vehicle for appropriate reform of the whole arena of viatical and life settlements.

Greg Van Horssen, State Farm Insurance, opposed the bill in its current form. He shared that he understands the intent of the bill, but he stood in opposition on behalf of agents for many of the same reasons already expressed. He asked the committee to remember that the vast majority of agents in the state are trying to do the right thing and need some guidance. He addressed Section 7, page 9, lines 24 and 25, which is an area of the insurance code that allows the commissioner to issue cease and desist orders. Previous to this bill, that power existed only in specific circumstances in Title 33. This change would allow cease and desist orders for any violation under the code or any rules issued under the code, and **Mr. Van Horssen** asked the committee to give that section a special look when considering the bill.

Questions from Committee Members and Responses:

SEN. SPRAGUE asked **Ms. Gerdrum** if, since we don't already have a problem, we are creating a problem. **Ms. Gerdrum** replied that the area she referred to when speaking of no problems in Montana was on life settlements only. She mentioned some unlicensed companies that had come into Montana and sell viaticals to investors. She offered to provide a summary of those abuses. She said there were 31 victims in Missoula and two others in the

state. When asked by **SEN. SPRAGUE** if those were, in fact, unlicensed agents, **Ms. Gerdrum** said that if they were licensed and would have been subject to the insurance code, the provisions for protection regarding viaticals would have kicked in. Again, **SEN. SPRAGUE** said that those individuals were working outside of the law. They were guilty and it proves that a bad guy is going to be a bad guy with or without more legislation. **Ms. Gerdrum** agreed.

SEN. GEBHARDT inquired **Mr. Baker** about the way elderly people are solicited. **Mr. Baker** replied that the company he represents, **Coventry First**, does not solicit business. The products are made known to financial advisors, attorneys and insurance agents.

Closing by Sponsor:

SEN. TESTER closed by saying that in looking at this bill, the committee needs to look at it from a point of responsibility in balancing the regulations with the protections of the elderly people. He asked them to think about who has the most resources and if it is the elderly person or the insurance company. It is also important to note that suitability has worked well for the securities industry as pointed out by **Mr. Mazurek** in his testimony. **SEN. TESTER** stated he thinks it can work in the insurance industry as well. He agreed with the previous statements made surrounding insurance agents and the fact that the majority of them are honest. However, if everyone were honest and full of integrity, we would not have to have very many laws. He asked the committee to keep in mind that they don't want to prohibit life settlements; they want to prohibit the resale of life settlements. Lastly, **SEN. TESTER** pointed out that we all work a lifetime to gain a few bucks to be able to enjoy our senior years. Things change for people as they age and that's why suitability is such an important issue. He asked the committee to consider the bill, analyze the bill, and do the right thing for the people of Montana.

HEARING ON SB 144

Sponsor: SENATOR GREGORY D. BARKUS, SD 39, Kalispell

Proponents: Brenda Elias, State Auditor's office; Joe Mazurek, D.A. Davidson

Opponents: None

Opening Statement by Sponsor:

SEN. BARKUS brought SB 144 forth for consideration and said that the proposed changes in this bill will address several simple changes in fee structure and definition of a sales person. The bill was presented to members of the Department of Securities Advisory Council and they ensure those changes will not raise any objections. He pointed the committee to the fiscal note indicating a positive \$6K, which would be a result of the higher fees. The bill changes the definition of a sales person so that selling certain federally covered securities are not covered; therefore, there's not a need to register with the department. It brings Montana into uniformity with a majority of states. A fee of 50 cents would be charged for the copying of documents by the agency's insurance department. On page 8, lines 26 and 28, it requires mutual fund companies to pay a charge of \$50 each time they change the name of one of their funds. Fund companies change the names of their funds rather regularly, and this fee accurately represents the work necessary to process those name changes within the agency. Page 9 explicitly states the filing requirements for issuers of federally covered securities. The filing requirements are already in place; the change brings conformity.

Proponents' Testimony:

Brenda Elias, State Auditor's office, distributed her fact sheet for SB 144, **EXHIBIT**(bus06a11).

Joe Mazurek, D.A. Davidson, rose in support of the legislation and shared that it provides certainty in filing requirements and obligations and allows for consistency.

Questions from Committee Members and Responses:

SEN. GEBHARDT questioned **Ms. Elias** about the fact that they are charging fees and yet the fiscal note showed an addition to the general fund. **Ms. Elias** answered that the fiscal note reflects income to the general fund.

SEN. SPRAGUE asked **Ms. Elias** about locking themselves into a fee of 50 cents. **Ms. Elias** replied that the insurance code now states 50 cents, so they chose that amount for uniformity.

Closing by Sponsor:

SEN. BARKUS asked for a DO PASS recommendation by the committee.

EXECUTIVE ACTION ON SB 51

SEN. ROUSH moved **DO PASS ON SB 51**. SB 51 passed unanimously.

EXECUTIVE ACTION ON SB 152

SEN. COCCHIARELLA moved **SB 152 DO PASS**. She discussed the amendments, **EXHIBIT(bus06a12)** (SB015201.aem), with the rest of the committee. **SEN. SPRAGUE** moved **SB 152 DO PASS AS AMENDED**. The vote was unanimous in favor of the bill as amended.

ADJOURNMENT

Adjournment: 11:45 A.M.

SEN. DALE MAHLUM, Chairman

SHERRIE HANDEL, Secretary

DM/SH

EXHIBIT (bus06aad)